IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 328 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT
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1.   Whether Reporters of Local Papers may be allowed
        to see the judgements? Yes.
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2.   To be referred to the Reporter or not? No.

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 3.   Whether Their Lordships wish to see the fair copy
        of the judgement?   No.

4.   Whether this case involves a substantial question
        of law as to the interpretation of the Constitution
        of India, 1950 of any Order made thereunder? No.

5.   Whether it is to be circulated to the Civil Judge?

                                               No.

        STATE OF GUJ
Versus
        RAJESHKUMAR MANHARLAL MODI

        Appearance:
            Mr.S.R.Divetia A.P.P. for Petitioner
            MR RN SHAH for Respondent No. 1

        CORAM : MR.JUSTICE S.D.PANDIT
        Date of decision: 20/03/97

ORAL JUDGEMENT
        Present Spl.Cri.Application is filed by the State
      of Gujarat through the Dy. Conservator of Forests,
      Rajpipla to challenge the order passed by the learned
      Sessions Judge at Broach in Cri. Appeal No.   3/88 ion
      17.11.88.

2. On 27.4.1987 the Forest Officers were in a position to detain a tempo bearing Regn.No. GRV 6938 owned by the respondent no.2. In the said tempo they had found ten logs of teak wood worth about Rs. 8000/-. Therefore, proceedings under section 61 of the Indian Forests Act was taken. said ten logs of teak wood were loaded in the said tempo from the house of one Shantilal Tadvi. Said tempo was engaged by one Mangalbhai and said Mangalbhai Divan was also the owner of the said ten logs of teak wood. Admittedly said persons had no pass or permit for possessing as well as carrying and transporting said ten logs of teak wood. After holding inquiry under section 61 of the Indian Forests Act, the Dy. Conservator of Forests was pleased to confiscate the said logs of teak wood as well as the tempo owned by respondent Rajesh Manharlal Modi.

3. Being aggrieved by the said decision Rajesh Manharlal Modi filed criminal appeal no. 3/88 before the learned Sessions Judge, Broach and the learned Sessions Judge was pleased to partly allow the said cri.appeal by the order dated 17.11.89 by ordering the respondent to pay the fine of Rs. 7000/- and releasing the tempo belonging to him. The State has come before this court to challenge the said order.

4. It is vehemently contended before me by Mr. Divetia learned A.P.P. that the learned Sessions Judge was not at all justified in interfering with the order of the Dy.Conservator of Forests in releasing the tempo belonging to the respondent.

5. The learned Sessions Judge has observed that in a proceeding under section 61 Shantilal Tadvi from whose house ten logs of wood in question were loaded in the tempo was awarded a fine of Rs. 500/- and Mangalbhai who was the owner of the said logs of teak wood and who had engaged the tempo in question for transporting the said ten logs of teak wood was awarded a fine of only Rs. 2000/-. Therefore, taking into consideration said action of the Deputy Conservator of Forests as regards the main culprit he has come to the conclusion that fine of Rs. 7000/- would meet the ends of justice. Admittedly the tempo of the respondent is a public transport vehicle and said vehicle was hired by Mangalbhai. It is not the case of the petitioner that the respondent was knowing full well that his tempo which was engaged was to be used for illegal transport of forest produce. Therefore, in the circumstances if the learned Sessions Judge uses his discretion in awarding only sentence of fine and not

confiscating the tempo in question, in my opinion there is nothing wrong in exercising such a discretion by the learned Sessions Judge. Thus I am unable to hold that the discretionary order passed by the learned Sessions Judge is illegal or perverse particularly in view of the conduct of the Forest Department in awarding the fine of only Rs. 2000/- to the owner of the forest produce which was illegally acquired and who has hired the tempo to transport the forest produce which was illegally acquired. . I therefore, hold that present application will have to be rejected. I therefore, reject the same. Rule discharged.

                              (S.D.Pandit.J)